



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/053,495	11/02/2001	Mark Cartier	005127.00090	3407

22907 7590 11/17/2004

BANNER & WITCOFF  
1001 G STREET N W  
SUITE 1100  
WASHINGTON, DC 20001

EXAMINER

STASHICK, ANTHONY D

ART UNIT	PAPER NUMBER
----------	--------------

3728

DATE MAILED: 11/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/053,495	CARTIER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Anthony Stashick	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 02 November 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>04222002, 06122002</u> . | 6) <input checked="" type="checkbox"/> Other: <u>11212002</u> .                         |

## **DETAILED ACTION**

### ***Drawings***

1. The drawings are objected to because Figures 6, 7, 8 and 9 do not exist in the drawings. Figures 6A-B, 7A-D, 8A-B and 9A-B are present. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: Reference numbers 711-714 and 741-744 are not present in Figures 7A-D as recited on page 9, last paragraph. Also, base 760 and reference number 700 are not in Figures 7A-D. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-5, 9-15 and 19-23 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 510,943 (EP '943). EP '943 discloses all the limitations of the claims including the following: an article of footwear having an upper 14; a sole structure 12, 18, 20 attached to the upper; the sole structure includes a midsole 12, 18 and an outsole 20; the midsole includes a

Art Unit: 3728

compressible first support element (38 within portion 12) located above a portion of the outsole in a back lateral corner of the sole structure (see Figure 3 and Figure 1); a lower surface of the first support element having a downward bevel in a lateral-to-medial and back-to-front direction (See 38 in Figures 2-4); the midsole includes a compressible second support element located in a back-medial corner of the sole structure (see Figures in portion 12), a compressible third support element (see Figures in portion 12) located on a lateral side of the sole structure and forward of the first support element and a compressible fourth support element (see Figures in portion 12) located on a medial side of the sole structure and forward of the second support element; the support elements are connected by a common base 34; the downward bevel is generally directed toward a center of a calcaneus bone of the wearer (see Figures 2 and 4); a line extending in the direction of the downward bevel forms an intersection with a longitudinal centerline of the footwear (see Figures 2 and 3), the intersection forming an angle in the range of 30 to 60 degrees (see Figures 2 and 3); the bevel departs from a horizontal plane to form an angle with the horizontal plane in the range of 5 to 10 degrees (see Figures 2 and 4); the first support element having a cylindrical configuration (see Figures 2-4, portion 38); second, third and fourth support elements having a cylindrical configuration (see Figures 2-4, portion 38); each support element having a columnar configuration (see Figures 2-4, portion 38).

### ***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person

Art Unit: 3728

having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6-8, 16-18 and 24-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 510,943 as applied above in view of Serna 5,983,529. EP '943 discloses all the limitations of the claims except for the support elements having interior and exterior walls with the interior walls forming a void and the outsole having a bevel that corresponds with the downward bevel of the first support element. EP '943 also teaches that the sole structure includes a heel plate 30 and a base plate 34 the heel plate attaching to the upper surface of the support elements and the base plate attaching to the lower surface of the support elements (See Figure 2). Serna '529 teaches that the support projections on a heel support can have interior walls and exterior walls forming a void in the center of the support (see Figures 2A-2H) that allows for air cushioning support for the user's weight during use. Serna '529 further teaches that the outsole can have a bevel that corresponds with the bevel of the first support element (See Figure 3C), which allows for better control as the user's foot is rolled outwardly. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to make the centers of the support elements of EP '943 hollow to allow for better cushioning and support for the user's foot during use. Furthermore, it would have been obvious to curve the outsole in the same direction as the first support element to allow the user better control as the user's foot rolls outwardly.

### *Conclusion*


7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and are cited on form 892 enclosed herewith.

Art Unit: 3728

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Stashick whose telephone number is (571) 272-4561. The examiner can normally be reached on Monday through Thursday from 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Anthony Stashick  
Primary Examiner  
Art Unit 3728

ADS